

Arthur B. Davis 76

1 board the three vessels as of, I think it
2 was two o'clock or three o'clock in the
3 morning on April 27th.

4 Q. And were you aware that
5 payments for shipments in process would
6 be made to NPR?

7 A. I became aware of that.

8 Q. When did you become aware
9 of that?

10 A. I really don't know the
11 exact time. Most recently during this
12 litigation.

13 Q. Did you ever identify
14 equipment involved in shipments in
15 process?

16 A. That was an impossible task
17 for me to do.

18 Q. Why was that?

19 A. Because although we asked
20 that Sea Star provide manifests many
21 times, they refused to do so.

22 Q. Well, now, the equipment
23 that was on board the vessels as of three
24 o'clock a.m. on April 27th of 2002, was

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1 listed in NPR, Incorporated manifests,

2 was it not?

3 A. It was.

4 Q. Did you ever review NPR's

5 manifests?

6 A. I did not.

7 Q. Did you ever ask NPR for

8 manifests?

9 A. There was no NPR,

10 Incorporated.

11 Q. NPR, Incorporated was

12 located in Gloucester City; is that

13 correct?

14 A. No.

15 Q. Where was NPR, Incorporated

16 located?

17 A. Edison, New Jersey.

18 Q. With respect to NPR,

19 Incorporated's records, where were those?

20 A. They would have been with

21 the trustee.

22 Q. And then are you saying

23 that at three o'clock a.m. on April 27th

24 of 2002 NPR, Incorporated's records

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1 Arthur B. Davis 78
disappeared?

2 A. No.

3 Q. Did you ever ask the NPR,
4 Incorporated's trustee for the manifests
5 of these vessels as of three o'clock a.m.
6 on April 27th of 2002?

7 A. I did not. I continuously
8 asked Sea Star who had the manifests to
9 provide the manifests.

10 Q. And have you ever heard
11 manifests from Sea Star?

12 A. Never.

13 Q. Sir, are you aware of
14 documents produced in this case?

15 A. I am.

16 Q. Have you reviewed those
17 documents?

18 A. I have.

19 Q. Did you review any of the
20 documents beginning with numbers SE 902
21 through SE 13,062?

22 A. What is that designated?

23 Q. Those are manifests from
24 4-27-2002 through 4-30-2004?

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Arthur B. Davis 79

1 A. I did look look at those
2 documents and they are in fact not
3 manifests.

4 Q. What are they?

5 A. They are loading reports
6 that were put together by Sea Star
7 employees allegedly from the original
8 documents.

9 Q. When you say allegedly,
10 what do you mean? Do you have any
11 question about what they are?

12 A. Positively. They are not
13 the original document.

14 Q. Are you familiar with
15 preparation of manifests?

16 A. Somewhat.

17 Q. To what extent are you
18 somewhat familiar with the preparation of
19 manifests?

20 A. I have my own understanding
21 as to how a manifest is prepared.

22 Q. Have you ever prepared
23 manifests?

24 A. I did not.

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1 Q. Have you ever had a job
2 where it was your duty to review
3 manifests?

4 A. No.

5 Q. Do you know whether there
6 are uniform methods of preparing
7 manifests?

8 A. I would think that there
9 are because there are requirements that
10 manifests in this case be filed with
11 organizations such as U.S. Bureau of
12 Customs, U.S. Coast Guard both in the
13 United States, Department De Hacienda,
14 the Department of the Home or the House
15 of Customs in Puerto Rico and this is how
16 equipment or the contents is tracked as
17 to who shipped what and where, if duties
18 had to be paid, was it contraband and so
19 forth.

20 And it also allows that if
21 somebody -- said I got ten bales of
22 feathers in here and it turns out that it
23 is steel pipe. Then they have -- they,
24 the government agency, has the ability to

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 81
2 go after the shipper and/or the receiver.

3 Q. Did you ever go to any of
4 these agencies that you have mentioned
5 and asked to review the NPR, Incorporated
6 manifests for the voyages in process as
7 of three o'clock a.m. on April 27th of
8 2002?

9 A. Not yet.

10 Q. Do you plan to?

11 A. We might.

12 Q. When?

13 A. I don't know that.

14 Q. Did you make any effort to
15 determine what shipments were in process
16 as of April 27th of 2002 at three o'clock
17 a.m. other than to ask Sea Star for
18 manifests?

19 A. I asked Sea Star for
20 manifests and I was told that the
21 manifests were at one point copied and
22 were available to be shipped.

23 They never shipped them,
24 they never provided them.

Q. Were you also invited to

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 82
2 come to Jacksonville to review the

3 manifests?

4 A. I was.

5 Q. Did you go to Jacksonville
6 to review the manifests?

7 A. I did not.

8 Q. All right.

9 A. I was told I would not be
10 able to capture any information in any
11 manner from the manifests.

12 Q. Who told you that?

13 A. I don't remember if it was
14 Phil Bates or Andy Rooks.

15 Q. Do you know what was meant
16 by quote any information in any manner
17 unquote?

18 A. Yes. I was told I would
19 not be able to write it, I would not be
20 able to put it into a computer, I would
21 not be able to photocopy it.

22 I would be allowed to look
23 at the piece of paper period. That I
24 could not leave with any type of
document.

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Arthur B. Davis 83

1 Q. When did you first begin
2 examining the documents that were
3 produced as manifests in this case?

4 A. I don't understand your
5 question.

6 Q. It is a very simple
7 question.

8 When did you first begin to
9 examine the documents that were produced
10 as manifests in this case?

11 A. Are you asking me the load
12 reports that were produced?

13 Q. What do you mean when you
14 say load reports?

15 A. That's not a manifest. It
16 is whatever is entitled on the document
17 and whatever the document is entitled
18 that's what I mean.

19 Q. So if the document is
20 entitled load report you are saying
21 that's not a manifest?

22 A. It is in fact not a
23 manifest and even Sea Star said it is not
24 a manifest.

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Arthur B. Davis 84

1 Q. When did Sea Star say it is

2 not a manifest?

3 A. In their e-mails.

4 Q. Whose e-mails?

5 A. Phil Bates.

6 Q. Phil Bates told you that

7 the documents that you have been

8 reviewing are not manifests?

9 A. No, he didn't tell me. He

10 sent the e-mail to other people at Sea

11 Star.

12 Q. Who were those other

13 people?

14 A. I don't recall.

15 Q. When did he send the

16 e-mail?

17 A. After they finished the

18 input of all of the material from the

19 manifests, he commended his staff on

20 doing a good job of taking information

21 from the e-mails -- from the manifests.

22 I'm sorry.

23 Q. And you are saying that

24 these documents that were produced are

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 85

1 not the quote manifests unquote that Phil

2 Bates was referencing?

3 A. They are not manifests

4 period.

5 Q. And other than the fact

6 that you say they are entitled load

7 reports?

8 A. They are not a manifest

9 period. They are not a manifest. No

10 other way to say that.

11 Q. Well, yes, there is. What

12 are the factors involved in preparing a

13 complete manifest in your view?

14 A. The manifests will show the

15 vessel. It is a specific form that the

16 government puts out. And all of that

17 form has to be filled in showing every

18 piece of equipment that's loaded onto or

19 taken -- then taken from the vessel.

20 Q. Taken from the vessel?

21 A. When you have a discharge,

22 the stevedore, when they discharge a

23 ship, would have a copy of the manifest

24 to show what is supposed to come off that

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 86
report -- off that ship, I'm sorry, and
2 be able to compare what he discharged
3 back to the manifests, that's why the
4 manifest is so important.

5 Q. The discharging stevedore
6 doesn't prepare a manifest, does he?

7 A. He does not, but he uses
8 the manifests to confirm that he took
9 off.

10 Q. Let me show you a copy of a
11 letter dated June 10 of 2002 which I will
12 ask the court reporter to mark as exhibit
13 10 for identification.

14 - - -

15 (Whereupon, Exhibit
16 Number 10 was marked for
17 identification.)

18 - - -

19 BY MR. ARMSTRONG:

20 Q. Do you recognize that
21 document?

22 A. Yes, I do.

23 Q. When did Tom Holt, Sr
24 become president of Emerald Equipment

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 87

1 Leasing?

2 A. I think March or April of
3 2001.

4 Q. Is Tom Holt, Sr still
5 president of Emerald Equipment Leasing?

6 A. Yes.

7 Q. Did he succeed you as
8 president?

9 A. Yes.

10 Q. When did you become aware
11 that payments due for equipment not used
12 in shipments in process or not for a
13 purpose other than completing shipments
14 in process on April 27th, would be made
15 to MBC Leasing, Incorporated?

16 A. I am not sure exactly.

17 Q. Did you ever have any
18 discussions with Tom Holt, Sr regarding
19 the contents of this letter?

20 A. No.

21 Q. Did you ever have any
22 discussions with Tom Holt, Sr regarding
23 payments for shipments in progress to
24 NPR, Incorporated?

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Arthur B. Davis 88

1 A. I don't understand that

2 question.

3 Q. Did you and Tom Holt, Sr

4 ever discuss the fact that Sea Star

5 Line's payments for equipment used in

6 shipments in progress would be paid for

7 MBC Leasing, Incorporated or Holt Cargo

8 Systems?

9 MR. MOLDOFF: You mean

10 in process.

11 MR. ARMSTRONG: I used

12 the term process others use the

13 term progress.

14 MR. MOLDOFF: And the

15 transcript I think when this was

16 all discussed at the hearing said

17 in transit. I think we are all

18 talking about the same thing.

19 MR. ARMSTRONG: That

20 is correct.

21 THE WITNESS: I don't

22 recall any conversations.

23 BY MR. ARMSTRONG:

24 Q. When did you first become

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 89
2 aware of the payments by Sea Star for
3 shipments in process or progress or
4 transit as of April 27th of 2002 would be
5 made to NPR, Incorporated?

6 A. Probably when I met with
7 Andy Rooks last August of 2003 at
8 Jacksonville.

9 Q. When you heard that, did
10 you go back and discuss it with Tom Holt,
11 Sr?

12 A. No.

13 Q. Did you discuss it with
14 anyone?

15 A. I believe I had some
16 discussion with Scott Criegee in that
17 regard.

18 Q. What did you say to Scott
19 Criegee?

20 A. I asked him for his
21 understanding of what was happening
22 there.

23 Q. What did he tell you?

24 A. He had sent a letter or had
Bill Hallam send a letter, I am not

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 90
exactly sure, but there was certainly a

2 question of what was involved there.

3 Andy Rooks had told me
4 prior to our meeting that there was an
5 agreement. I had asked Andy for a copy
6 of the agreement.

7 He told me that Bob Leach
8 would have to get it for me. Bob Leach
9 wasn't available when I was in
10 Jacksonville.

11 I asked again for copies of
12 what that agreement was supposed to be so
13 that the correct amounts could be applied
14 to the billing and I never did receive
15 any paperwork from this agreement at all.

16 Q. Did you ever ask the NPR
17 bankruptcy lawyer for a copy of the
18 agreement?

19 A. I did not.

20 Q. Did you ever ask Emerald's
21 bankruptcy lawyer for a copy of the
22 agreement?

23 A. At one point I probably
24 did.

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Arthur B. Davis 91

1 Q. Do you recall?

2 A. I think I did.

3 Q. When did you first see a
4 copy of the agreement?

5 A. It was certainly after the
6 August meeting with Sea Star.

7 Q. Other than for shipments in
8 process, to what entity was Sea Star to
9 make payments for equipment, for Emerald
10 equipment after April 27th of 2002?

11 A. They were paying the funds
12 to MBC Leasing, Incorporated.

13 Q. How long was Sea Star to
14 pay the funds to MBC Leasing,
15 Incorporated?

16 A. I don't understand your
17 question.

18 Q. Why was Sea Star to pay the
19 funds to MBC Leasing, Incorporated rather
20 than Emerald?

21 MR. MOLDOFF: If you
22 know.

23 Q. If you know?

24 A. My understanding is that

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 92
1 MBC Leasing, Incorporated held a lien,
2 they were the secured creditor on the
3 equipment, and my recollection is that
4 there was a lifting of the stay and that
5 MBC Leasing, Incorporated was allowed to
6 receive the money to reduce the amount of
7 the loan.

8 Q. Let me show you a copy of a
9 document dated April 19th of 2002, which
10 I will ask the court reporter to mark as
11 exhibit 11 for identification.

12 - - -

13 (Whereupon, Exhibit
14 Number 11 was marked for
15 identification.)

16 - - -

17 BY MR. ARMSTRONG:

18 Q. Have you ever seen that
19 document?

20 A. Yes, I believe I have seen
21 this.

22 Q. Do you recall when you
23 first saw it?

24 A. As part of the production

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 93
of documents.

Q. Did you discuss that
document with anyone?

A. No.

Q. Let me show you a copy of a
letter dated June 11 of 2002, together
with attachment which I will ask the
court reporter to mark as exhibit 12 for
identification.

- - -

(Whereupon, Exhibit
Number 12 was marked for
identification.)

- - -

BY MR. ARMSTRONG:

Q. Have you seen that letter
before?

A. Yes.

Q. Do you recall when you
first saw it?

A. As part of the production
of documents.

Q. Do you recognize the
signature on the first page?

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Arthur B. Davis 94

1 A. I am not sure.

2 Q. Let me show you a copy of a
3 letter dated June 19 of 2002 which I will
4 ask the court reporter to mark as exhibit
5 13 for identification.

6 - - -

7 (Whereupon, Exhibit
8 Number 13 was marked for
9 identification.)

10 - - -

11 BY MR. ARMSTRONG:

12 Q. Have you seen that letter
13 before?

14 A. Yes, I have seen this
15 before.

16 Q. When did you first see that
17 letter?

18 A. I believe at the time of
19 the document production.

20 Q. You had never seen it
21 before that time?

22 A. I don't recall it.

23 Q. You did not receive a copy
24 from Mr. Hallam?

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 95

1 A. I don't recall receiving

2 seeing it before then.

3 Q. Did you and Mr. Hallam have
4 any communications regarding the contents
5 of that letter or the subject matter of
6 that letter?

7 MR. MOLDOFF: Take
8 your time because it is a long
9 letter.

10 THE WITNESS: I am
11 going to read this.

12 - - -

13 (Whereupon, a short
14 recess was taken.)

15 - - -

16 MR. MOLDOFF: If you
17 don't remember you could say you
18 don't remember. It's maybe helpful
19 if counsel directed you to a
20 portion of that letter.

21 MR. ARMSTRONG: No.
22 We will start --

23 MR. MOLDOFF: -- all
24 right.

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Arthur B. Davis 96

1 THE WITNESS: No.

2 Q. Did you have any
3 communications with Mr. Criege
4 concerning any of the contents of that
5 letter?

6 A. I said I recall -- I think
7 I remember talking with Scott Criege
8 about money that was being paid to NPR,
9 Incorporated for what was on board the
10 vessels.

11 Q. Let me show you a copy of a
12 letter dated July 15 of 2002 which I will
13 ask the court reporter to mark as exhibit
14 number 14 for identification.

15 - - -

16 (Whereupon, Exhibit
17 Number 14 was marked for
18 identification.)

19 - - -

20 BY MR. ARMSTRONG:

21 Q. Do you recognize that
22 letter?

23 A. Yes.

24 Q. When did you first see that

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 97

1 letters?

2 A. I don't recall.

3 Q. Do you recall approximately
4 how long after at the time date of the
5 letter you first saw it?

6 A. I do not.

7 Q. Do you remember whether you
8 saw it prior to this lawsuit?

9 A. I believe I have.

10 Q. Did you ever any
11 discussions with Scott Criegee or Bill
12 Hallam regarding the contents of that
13 letter?

14 A. I don't believe so.

15 Q. Let me show you a copy a
16 document entitled indemnity agreement,
17 dated September 28 of 2002 which I will
18 ask the court reporter to mark as exhibit
19 15 for identification.

20 - - -

21 (Whereupon, Exhibit

22 Number 15 was marked for
23 identification.)

24 - - -

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 98

1 BY MR. ARMSTRONG:

2 Q. Have you seen that document
3 before?

4 A. Yes.

5 Q. When did you first see that
6 document?

7 A. I am not sure.

8 Q. Did you see it prior to the
9 filing of this lawsuit?

10 A. Yes.

11 Q. Did you and Scott Crieiger
12 have any communications regarding the
13 indemnity agreement?

14 A. Yes.

15 Q. When did you first have
16 communications regarding the indemnity
17 agreement?

18 A. I am not sure as to time.

19 Q. How many communications do
20 you recall having with Scott Crieiger
21 regarding the indemnity agreement?

22 A. Not a few.

23 Q. Did you contact Scott
24 Crieiger regarding the indemnities

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 99

1 agreement?

2 A. I did.

3 Q. And what was your purpose
4 in contacting him?

5 A. I was advised by either
6 Phil Bates or Andy Rooks that an
7 indemnity agreement was in place and that
8 indemnified them Sea Star from having to
9 pay Emerald additional monies that we had
10 invoiced to them. Invoices we provided
11 to them for equipment that we said they
12 used and billed out accordingly.

13 Q. And do you recall whether
14 Mr. Bates or Mr. Rooks made these
15 statements during your meeting in
16 Jacksonville?

17 A. I don't recall.

18 Q. When you contacted Mr.
19 Criege what did you say?

20 A. I asked what the indemnity
21 agreement was about.

22 Q. Did he give you a copy of
23 it?

24 A. I believe either he sent it

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 100
or Bill Hallam sent it.

2 Q. What did he tell you the
3 indemnity agreement was about?

4 A. It was about indemnifying
5 Sea Star from a third party claim - I'm
6 sorry - a third party claimant.

7 Q. You reviewed the indemnity
8 agreement after you received it?

9 A. I think I did, yes.

10 Q. And you saw indemnity
11 agreement that the quote third party
12 claimant to which you referred would
13 include Emerald Equipment Leasing?

14 MR. MOLDOFF: I object
15 to the extent this document speaks
16 for itself, but he can answer as to
17 his understanding of the document.

18 THE WITNESS: I don't
19 know where that would be in this
20 document.

21 Q. Do you recall the reference
22 to Emerald, NPR, Incorporated, Holt Cargo
23 or any party claiming under or through
24 them jointly and severally quote

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 101
1 competing claimants unquote?

2 A. I could only say to the
3 extent, whatever it is that you just read
4 is here, that it is here.

5 Q. Did you ask Scott Criegee
6 how the indemnity agreement might affect
7 any claim made by Emerald Equipment
8 Leasing?

9 A. Certainly.

10 Q. What did he tell you?

11 A. That it was generally
12 nonsense.

13 Q. What was generally
14 nonsense?

15 A. That Sea Star Line would
16 say that monies that they have to pay for
17 equipment that they used would not be
18 discharged just because they decided they
19 weren't going to pay it.

20 If they used the equipment
21 they had to pay for the use of the
22 equipment, for the time that it was in
23 use.

24 Q. And that's what Scott

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 102
1 Criegeer told you?

2 A. That's what we discussed.

3 Q. Did you have any other
4 communications with Scott Criegeer
5 regarding the indemnity agreement?

6 A. Yes.

7 Q. What was the subject of
8 those communications?

9 A. Well --

10 Q. -- Or what was the subject?

11 A. He told me he had
12 conversations with Phil Bates and that
13 Phil Bates agreed they had no standing to
14 not paying for the equipment that they
15 were using.

16 Q. Do you recall when that
17 communication was?

18 A. Not really.

19 Q. Did you have any other
20 communications with Scott Criegeer
21 regarding the indemnity agreement?

22 A. No.

23 Q. Did you have any
24 communications with Mr. Hallam regarding

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 103
1 the indemnity agreement?

2 A. I don't recall.

3 Q. Did you have any
4 communications with Tom Holt, Sr
5 regarding the indemnity agreement?

6 A. Not that I recall.

7 Q. Did you have any
8 communications with Tom Holt, Jr
9 regarding the indemnity agreement?

10 A. I don't know.

11 Q. I will show you a copy of a
12 document entitled equipment rental
13 agreement, dated as of July 31st of 2002,
14 which I will ask the court reporter to
15 mark as exhibit 16 for identification.

16 - - -

17 (Whereupon, Exhibit
18 Number 16 was marked for
19 identification.)

20 - - -

21 BY MR. ARMSTRONG:

22 Q. Do you recognize that
23 document.

24 A. Yes, I do recognize this

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 104
document.

2 Q. Do you recognize the
3 signatures on, I believe it would be
4 page -- the last page of the document --
5 of the actual text of the contract?

6 A. I believe I do.

7 Q. Whose signatures do you
8 recognize?

9 A. Philip Bates and Thomas J.
10 Holt.

11 Q. Is that Thomas J. Holt, Sr?

12 A. It would be, yes.

13 Q. At the time was Thomas J.
14 Holt, Sr., President of Emerald Equipment
15 Leasing?

16 A. Yes.

17 Q. Prior to Mr. Holt signing
18 had the document, did you have any
19 discussions with him concerning its
20 contents?

21 A. Yes.

22 Q. And what were those
23 discussions?

24 A. Basically went over the

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 105

1 agreement.

2 Q. So Mr. Holt read the
3 agreement before he signed it?

4 A. I believe so.

5 Q. Did you have any
6 communications with Scott Criege
7 concerning this document?

8 A. Yes.

9 Q. What communications did you
10 have with Scott Criege concerning the
11 equipment rental agreement?

12 A. I provided the agreement.

13 Q. After you provided the
14 agreement, did Scott Criege ask you any
15 questions about it?

16 A. I don't recall.

17 Q. Did he give you any
18 instructions regarding the agreement?

19 A. Only to the extent that he
20 didn't see a problem with it.

21 Q. Do you recall anything
22 else?

23 A. No.

24 Q. Did you have any

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 106
communications with Mr. Hallam regarding

2 the equipment rental agreement?

3 A. Yes.

4 Q. What communications did you
5 have with him?

6 A. This was an evolving
7 process, so whatever drafts came up,
8 copies were provided to Mr. Hallam.

9 Q. Was Mr. Hallam telling you
10 what should be in the agreement?

11 A. Yes, the same as yourself.

12 Q. Did Mr. Hallam tell you
13 that signing the agreement would require
14 the authorization of MBC Leasing,
15 Incorporated?

16 A. Yes.

17 Q. Did you receive the
18 authorization of MBC Leasing,
19 Incorporated to sign the agreement?

20 A. Yes.

21 Q. Did you understand why the
22 authorization of MBC Leasing,
23 Incorporated was necessary to sign the
24 agreement?

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1 A. Yes.

2 Q. What was your

3 understanding?

4 A. MBC Leasing had a secured

5 lien on the equipment.

6 Q. MBC Leasing, Incorporated

7 in actuality controlled the equipment, is

8 that correct?

9 A. I don't understand the term

10 controlled.

11 Q. You could not do anything

12 with respect to Emerald equipment without

13 MBC Leasing's permission, is that

14 correct?

15 MR. MOLDOFF: If you

16 know. To the extent it calls for a

17 legal conclusion I object.

18 A. I don't know.

19 Q. You are familiar with the

20 equipment rental agreement; is that

21 right?

22 A. I am.

23 Q. Paragraph 1, under

24 paragraph 1 effecting delivery would be

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 108
by signed and dated equipment interchange

2 receipts; is that correct?

3 A. That's correct.

4 Q. What's an equipment

5 interchange receipt?

6 A. It is a document that the
7 parties execute to show that a piece of
8 equipment was delivered or seized.

9 Q. Is that sometimes
10 abbreviated as EIR?

11 A. I have never heard that.

12 Q. And, now, is there another
13 type of interchange receipt called a
14 trailer interchange receipt?

15 A. Yes.

16 Q. What is a trailer
17 interchange receipt?

18 A. It would be the same
19 explanation.

20 Q. Are equipment interchange
21 receipts and trailer interchange receipts
22 forms used to interchange equipment?

23 A. Say that again please.

24 Q. Are equipment interchange

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 109

1 receipts and trailer interchange receipt

2 forms used interchangeably in the

3 industry?

4 A. I only know of the term

5 TIR.

6 Q. What is a TIR?

7 A. The trailer interchange --

8 Q. -- Are equipment

9 interchange receipts and TIR forms used

10 interchangeably in the industry?

11 A. As I just said I am

12 familiar with the term TIR.

13 Q. So, you are not familiar

14 with the equipment interchange receipts?

15 A. To the extent that they are

16 doing the same thing, then they are doing

17 the same thing.

18 Q. Paragraph 10 a, states at

19 its sole expense lessee shall re-deliver

20 equipment to lessor at Philadelphia,

21 Pennsylvania, Sea Star Line Puerto Nuevo

22 San Juan, Greenwich Terminals, Port of

23 Jacksonville, Florida or any other

24 location as to which the parties agreed

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 110
2 in writing.

3 Where was Greenwich
4 Terminals Philadelphia, Pennsylvania
5 located?

6 A. 3301 South Columbus
7 Boulevard, Philadelphia.

8 Q. Is that the same as the
9 Packer Avenue terminal?

10 A. It is.

11 Q. Where was the Sea Star
12 terminal Puerto Nuevo, San Juan, Puerto
13 Rico location?

14 A. At Puerto Nuevo, San Juan,
15 Puerto Rico.

16 Q. That was the terminal that
17 Sea Star Line acquired from NPR,
18 Incorporated or from the Port Authority
19 through the NPR, Incorporated asset
20 purchase?

21 A. I believe so.

22 Q. Where was the Greenwich
23 Terminals Port of Jacksonville, Florida
24 located?

A. At the Jacksonville port

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 111
and that is the same facility that NPR

2 used to operate.

3 Q. Was there a Greenwich
4 Terminal Port of Jacksonville, Florida on
5 April 27th of 2002?

6 A. No.

7 Q. When did the Greenwich
8 Terminals Port of Jacksonville, Florida,
9 actually open?

10 A. I believe it actually
11 opened around the first of August of
12 2002.

13 Q. Between April 27th of 2002
14 and approximately the 1st of August of
15 2002, where would Sea Star re-deliver
16 equipment in Jacksonville?

17 A. I don't know that I could
18 answer that.

19 Q. Did you ever make an
20 inquiry?

21 A. Certainly.

22 Q. From whom did you inquire
23 or to whom did you inquire?

24 A. I am not sure who at Sea

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 112
Star I spoke to about the equipment at

2 that time.

3 Q. What did you learn as a
4 result of your inquiries?

5 A. That equipment was being
6 put back into that yard.

7 Q. What yard?

8 A. The JAX yard.

9 Q. Did the JAX yard have a
10 designation?

11 A. I don't understand what you
12 mean by designation.

13 Q. Was it the old NPR,
14 Incorporated terminal?

15 A. That is correct.

16 Q. Did you have people manning
17 the old NPR terminal between April 27th
18 of 2002 and August 1 of 2002?

19 A. I don't believe so.

20 Q. Why not?

21 A. That wasn't being done.

22 Q. How did you record what
23 equipment was being returned to the old
24 NPR terminal between April 27th and

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 113

1 August 1? Hold that thought.

2 A. We didn't. We had relied
3 upon records that were inputted by Sea
4 Star for what was going out of the
5 terminal and what was coming into the
6 terminal.

7 Q. Going out of what terminal?

8 A. Either the JAX terminal,
9 that was the former NPR terminal or Sea
10 Star's terminal in JAX.

11 Q. For what period of time did
12 you rely on those records?

13 A. Sea Star employees were
14 using the Holt Logistic's computer system
15 as a tracking system for the equipment.

16 So for whatever that
17 specific period of time it was in use,
18 that would have certainly provided direct
19 information. And we also relied upon the
20 information from the Sea Star several
21 billing reports.

22 Q. For what period of time did
23 Sea Star use the Holt's system, the
24 Holt's computer system?

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 114

1 A. I think it was

2 approximately three weeks.

3 Q. Now, subparagraph b of

4 paragraph 10, says in part upon

5 re-deliver of particular equipment the

6 receiving terminal will execute an

7 equipment interchange receipt. Do you

8 see that?

9 A. I do.

10 Q. In Philadelphia the

11 receiving terminal was Greenwich

12 Terminals; is that correct?

13 A. Yes.

14 Q. In JAX PORT after

15 approximately August 1st, the receiving

16 terminal was Greenwich Terminals; is that

17 correct?

18 A. That's correct.

19 Q. In San Juan the receiving

20 terminal was the Sea Star terminal; is

21 that correct?

22 A. Yes.

23 Q. Your understanding of the

24 language equipment interchange receipt in

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 115
2 that subparagraph would be a TIR; is that
3 correct?

4 A. Yes.

5 Q. So when equipment was
6 re-delivered the terminal that took it in
7 would sign a TIR; is that right?

8 A. It would. The TIR would be
9 issued at the time that something was
10 happening with that specific piece of
11 equipment.

12 Q. Would the TIR be issued at
13 the time that the equipment came through
14 the receiving terminal's gate?

15 A. That's when it is supposed
16 to happen. That is right.

17 Q. And that would be in terms
18 of a piece of equipment coming into the
19 terminal, a gate-in procedure?

20 A. Gate-in, yes.

21 Q. And with respect to
22 equipment going out of the terminal, it
23 would be a gate-out procedure; is that
24 correct?

25 A. That is correct.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 116

1 MR. ARMSTRONG: Do you

2 want a break for lunch?

3

4

5

6

(Whereupon, a luncheon

7

recess wastaken.)

8

9

10

11 BY MR. ARMSTRONG:

12 Q. Is gate-in abbreviated as

13 G.I.

14 A. Yes.

15 Q. Is gate-out abbreviated as

16 G.O.?

17 A. I would take it for that,

18 yes.

19 Q. In this equipment agreement

20 paragraph 15 a, states in part, this

21 agreement contains the entire agreement

22 between the parties and subject to the

23 provisions of section 1, may not be

24 amended altered or modified except by

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 117
writing signed by the party to be bound.

2 Do you see that?

3 A. I see that.

4 Q. Are you aware of any other
5 agreements between the parties, that is
6 Emerald Equipment Leasing and Sea Star
7 Line?

8 A. Sure.

9 Q. What other agreements
10 existed between Emerald Equipment Leasing
11 and Sea Star Line?

12 A. This was the initial
13 agreement where Sea Star Line started to
14 lease equipment as of the May 1 of 2002.

15 Q. Is that in writing?

16 A. Yes.

17 Q. Did this agreement
18 supersede that agreement?

19 MR. MOLDOFF:
20 Objection to the extent it seeks a
21 conclusion of law.

22 Q. To the extent of your
23 knowledge?

24 A. I would say it more

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 118
2 formalized what the parties had already
3 been doing or tried to do, formalize what
4 the parties had already been doing for
5 like five months.

6 Q. Are you aware of any other
7 agreements besides the two that you
8 described between Emerald Equipment and
9 Sea Star?

10 A. Other than this written
11 agreement and the May agreement?

12 Q. Right.

13 A. Yes.

14 Q. What other agreements
15 existed?

16 A. There was an agreement with
17 Sea Star Line whereby I would sell
18 equipment if I had a ready buyer.

19 I would sell equipment at
20 various in lands port, I'm sorry, inland
21 depots or terminals so that they would
22 not have to return the equipment to the
23 three stated return ports.

24 And in turn Sea Star Line
had agreed that there part of the

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 119

1 bargain, if you will, they would stop

2 off-hiring equipment in San Juan.

3 Q. Was that agreement in

4 writing?

5 A. It was not.

6 Q. When do you think you

7 entered into that agreement?

8 A. As I started to sell

9 equipment at the various inland depots.

10 Q. And with whom do you think

11 you entered into that agreement?

12 A. Phil Bates and Andy Rooks.

13 Q. Are you aware any other

14 agreements between Emerald Equipment and

15 Sea Star?

16 A. Not at this point, no.

17 Q. Let me show a you a copy of

18 a document entitled independent

19 contractor agreement which I will ask the

20 court reporter to mark as exhibit 17 for

21 identification.

22 - - -

23 (Whereupon, Exhibit

24 Number 17 was marked for

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 120
identification.)

- - -

MR. ARMSTRONG

Q. Do you recognize that?

Before I ask you that, let me ask you
with respect to the equipment rental
agreement.

Are you aware of any
amendments to the equipment rental
agreement?

A. I don't think so.

Q. Are you aware of any
modifications to the equipment rental
agreement?

A. No.

MR. MOLDOFF: Other
than what he testified to, to the
extent they were modifications.

I object to the question to
the extent it may call for some
legal conclusion.

Q. There were no modifications
to the equipment rental agreement as of
or after July 31st of 2002, is that

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 121

1 correct?

2 MR. MOLDOFF: Same

3 objection, but you could answer.

4 THE WITNESS: Other

5 than the agreement that I had to

6 sell equipment with Sea Star.

7 Q. Are you saying that that

8 was a modification of the equipment

9 rental agreement?

10 MR. MOLDOFF: Same

11 objection to the extent it calls

12 for a legal conclusion.

13 A. Certainly.

14 Q. That was not in writing; is

15 that correct?

16 A. That is correct.

17 Q. Are you aware of any

18 alterations of the equipment rental

19 agreement on or after July 31st of 2002?

20 MR. MOLDOFF:

21 Objection to the question

22 just to the extent meaning of

23 alterations.

24 A. I don't know what you mean

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 122

1 by alterations.

2 Q. The language in the
3 agreement states and I will repeat it
4 this agreement contains the entire
5 agreement between the parties and subject
6 to the provisions of section 1 may not be
7 amended, altered or modified except by a
8 writing signed by the party to be bound.

9 In the context of that
10 language, are you aware of any ways in
11 which the equipment rental agreement was
12 altered on or after July 31st of 2002?

13 A. No.

14 Q. Now, moving forward to the
15 independent contractor agreement which I
16 asked the court reporter to mark as
17 exhibit 17 for identification, do you
18 recognize that document?

19 A. Yes, I have seen this.

20 Q. When did you first see that
21 document?

22 A. I am really not sure as to
23 the date.

24 Q. Did you participate in

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 123
negotiating the independent contractor

2 agreement?

3 A. To some extent, yes.

4 Q. What was your
5 participation?

6 A. Talked about minimum
7 pricing on equipment and what we would be
8 able -- what would be able to be done on
9 behalf of MBC Leasing.

10 Q. Look at the arrangement
11 page, section 21, notices to the
12 contractor?

13 A. All right.

14 Q. There's some handwriting
15 under Greenwich Terminals LLC. Can you
16 read that?

17 A. Yes.

18 Q. Is that Thomas J. Holt, Jr?

19 A. It is.

20 Q. President 3301 South
21 Columbus Boulevard Philadelphia,
22 Pennsylvania?

23 A. Yes.

24 Q. Do you recognize the

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 124
handwriting?

2 A. I do.

3 Q. Whose handwriting is it?

4 A. Tom Holt, Jr.

5 Q. Was Tom Holt, Jr president
6 of Greenwich Terminals when this contract
7 was signed.

8 MR. MOLDOFF: We will
9 object.

10 A. I'm sorry.

11 MR. MOLDOFF: I object
12 to that question.

13 Q. All right. You can go
14 ahead and answer.

15 MR. MOLDOFF: I object
16 to the extent it's calls for
17 speculation.

18 A. I don't know.

19 Q. Look at exhibit D,
20 contractors representatives, do you know
21 who prepared that list?

22 A. I believe it was MBC
23 Leasing.

24 Q. Thomas Holt, Jr., Arthur

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 125
Davis, Arthur Davis would be you; is that
2 correct?

3 A. That's correct.

4 Q. So you were a
5 representative of Greenwich Terminals
6 under this contract?

7 A. That is right.

8 Q. And the third name is
9 Martin McDonald, who is that?

10 A. Martin McDonald was an
11 employee of NPR, Incorporated.

12 Q. All right.

13 Was he an employee of NPR,
14 Incorporated on or about June 30th of
15 2002?

16 A. No.

17 Q. Do you know who his
18 employer was on or about June 30th of
19 2002?

20 A. No.

21 Q. Did he have any
22 relationship with Emerald on or about
23 June 30th of 2002?

24 MR. MOLDOFF: If you
ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 126
know.

2 A. Not that I am aware of.

3 Q. When he was an employee of
4 NPR, Incorporated, what was Mr.
5 McDonald's position?

6 A. I believe he was a vice
7 president.

8 Q. Do you know what his duties
9 were as vice president?

10 A. No.

11 Q. Do you know what his
12 employment status was when NPR
13 terminated?

14 A. I can't say for sure.

15 Q. Do you know who was paying
16 Martin McDonald on June 30th of 2002?

17 A. No.

18 Q. Under this agreement, do
19 you know what Mr. McDonald's
20 responsibilities were on behalf of
21 Greenwich Terminals or as a Greenwich
22 Terminal representative?

23 A. Yes.

24 Q. What were his

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 127
responsibilities?

1
2 A. He was to be involved with
3 the equipment specifically in Puerto
4 Rico.

5 Q. Was there any reason why he
6 was to be involved with the equipment
7 specifically in Puerto Rico as you
8 indicated?

9 A. That was what was assigned
10 to him.

11 Q. And what was your
12 involvement as a Greenwich Terminals
13 representative?

14 A. Generally all of the
15 equipment.

16 Q. Did Mr. McDonald report to
17 you?

18 A. Yes.

19 Q. Did Mr. McDonald report to
20 you in writing?

21 A. No.

22 Q. Did he send you e-mails?

23 A. No.

24 Q. Was there any procedure for

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 128
reporting to you?

2 A. We spoke on the phone.

3 Q. How often did you speak on
4 the phone?

5 A. On an as-needed basis.

6 Q. Do you know where Mr.
7 McDonald is now, that is where he resides
8 now?

9 A. I don't have an address for
10 him.

11 Q. Do you know where he's
12 employed, if he is employed?

13 A. I know he's employed, but I
14 am not sure where.

15 Q. Is he employed in this
16 area?

17 A. When you say this --

18 Q. The Philadelphia area?

19 A. No.

20 Q. Where do you think he's
21 employed?

22 A. North Jersey.

23 Q. Let me show you a copy a
24 letter dated July 19 of 2002 which I ask

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 129
the court reporter to mark as exhibit 18

2 for identification.

3 - - -

4 (Whereupon, Exhibit

5 Number 18 was marked for

6 identification.)

7 - - -

8 BY MR. ARMSTRONG:

9 Q. Have you ever seen that
10 letter before?

11 A. Yes.

12 Q. Do you recognize the
13 signature on that letter?

14 A. Yes.

15 Q. Whose signature is it?

16 A. Scott had Criegee.

17 Q. When did you first see that
18 letter?

19 A. I am not sure.

20 Q. Let me show you a copy of a
21 space allocation agreement dated August 1
22 of 2002, which I will ask the court
23 reporter to mark as exhibit 19 for
24 identification.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 130

1

- - -

2

(Whereupon, Exhibit

3

Number 19 was marked for

4

identification.)

5

- - -

6

BY MR. ARMSTRONG:

7

Q. Do you recognize that

8

document?

9

A. Yes, I have.

10

Q. Did you participate in

11

negotiating the space allocation

12

agreement?

13

A. No, I did not.

14

Q. Who negotiated on behalf of

15

Greenwich Terminals?

16

A. David Whene.

17

Q. What was his position?

18

A. I am not sure.

19

Q. Did he work for Greenwich

20

Terminals?

21

A. He did.

22

Q. Does he still work for

23

Greenwich Terminals?

24

A. Yes, he does.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 131

1 Q. Do you see the handwriting

2 on the first page as agents for MBC

3 Leasing, Incorporated.

4 Do you recognize that

5 handwriting?

6 A. Yes.

7 Q. Do you know who wrote that?

8 A. Yes.

9 Q. Who wrote that?

10 A. I did.

11 Q. The handwriting on the

12 second page, is that also yours?

13 A. It is.

14 Q. Whose initials are next to

15 the handwriting on the first page?

16 A. Tom Holt, Jr.

17 Q. Why did you write as agents

18 for MBC Leasing, Incorporated on the

19 first page?

20 A. Because Greenwich Terminals

21 was.

22 Q. And that was the only

23 capacity in which Greenwich Terminals was

24 entering into that agreement?

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 132

1 MR. MOLDOFF:

2 Objection, calls for a

3 legal conclusion, legal conclusion,

4 also calls for speculation.

5 A. You could repeat that

6 question?

7 - - -

8 (Whereupon, the

9 pertinent portion of the record was

10 read.)

11 - - -

12 A. I believe so.

13 Q. Do you know where page

14 three of the agreement is?

15 A. No, I don't.

16 Q. Let me show you a copy of a

17 letter dated October 25 of 2002 together

18 with attachments which I will ask the

19 court reporter to mark as exhibit 20 for

20 identification.

21 - - -

22 (Whereupon, Exhibit

23 Number 20 was marked for

24 identification.)

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 133

1

- - -

2 BY MR. ARMSTRONG:

3 Q. Do you recognize that
4 letter?

5 A. Yes.

6 Q. In that letter your name
7 appears under Holt Oversight and Logistic
8 Technologies, Incorporated?

9 A. Right.

10 Q. What was your position with
11 Holt Oversight & Logistical &
12 Technologies at that time?

13 A. It was the same as
14 previously described.

15 Q. You were an employee?

16 A. Yes.

17 Q. And was Holt Oversight and
18 Logistics and Technologies, Incorporated
19 acting as part of the Greenwich contract
20 with MBC Leasing, Incorporated?

21 A. Holt Oversight and
22 Logistics and Technologies,
23 Incorporated --

24 MR. MOLDOFF: -- I

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 134
object to the question.

Q. Let me rephrase that.

What was Holt Oversight and
Logistics and Technologies' role in
connection with the Greenwich Terminals,
MBC Leasing contract?

MR. MOLDOFF: If you
know.

A. They were supplying me as
an agent.

Q. Holt Oversight and
Logistics and Technologies, Incorporated
was paying you?

A. Yes.

Q. Let me show you a copy a
letter dated, telefax cover sheet dated
November 13 of 2002, which I will ask the
court reporter to mark as exhibit 21 for
identification.

- - -

(Whereupon, Exhibit
Number 21 was marked for
identification.)

- - -

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 135

1 BY MR. ARMSTRONG:

2 Q. Do you recognize that
3 document?

4 A. Yes, I have seen this.

5 Q. What action did you take to
6 comply with Scott Criege's request?

7 A. I spoke with the people at
8 Sea Star.

9 Q. What did you say to them?

10 A. I said to the people at Sea
11 Star that they needed to provide to me a
12 listing of any equipment that they
13 planned to purchase before they purchase
14 it, that they have to stop returning to
15 me as equipment that they are quotes
16 off-hiring, whether they off hired it, in
17 fact, or not, that they already purchased
18 and asked them what procedures they would
19 follow to insure that they would stop
20 doing that because they would return
21 their own equipment.

22 Q. Who are the people at Sea
23 Star that you told?

24 A. Andy Rooks, Phil Bates.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 136

1 Q. Anyone else?

2 A. Probably Arturo Rodriguez

3 in San Juan.

4 Q. Anyone else?

5 A. They come to mind.

6 Q. Let me show you a copy of a

7 document that apparently is an e-mail

8 with a response which I ask the court

9 reporter to mark as exhibit 22 for

10 identification.

11 - - -

12 (Whereupon, Exhibit

13 Number 22 was marked for

14 identification.)

15 - - -

16 BY MR. ARMSTRONG:

17 Q. Do you recognize that

18 document?

19 A. Yes, I do.

20 Q. Is the bottom a true and

21 correct copy of a e-mail that you sent?

22 A. Yes.

23 Q. And the top is Scott

24 Crieiger's response to you?

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 137

1 A. It is.

2 Q. Let me show you a copy of a
3 document which I will ask the court
4 reporter to mark as exhibit 23 for
5 identification.

6 BY MR. ARMSTRONG:

7 Q. Do you recognize that
8 document?

9 A. Yes.

10 Q. Is that a true and correct
11 copy of a letter that you received or
12 e-mail that you received?

13 A. This is an e-mail.

14 Q. In your vocabulary it is
15 not a letter?

16 A. Right.

17 Q. Is it a true and correct
18 copy of an e-mail that you received?

19 A. It appears to be so.

20 Q. Are you familiar with the
21 showroom property at Puerto Nuevo?

22 A. I am.

23 Q. What is the showroom
24 property?

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 138

1 A. It is a name that was given
2 as a designation to some ground that it
3 is immediately off the terminal.

4 Q. Off what terminal?

5 A. In Puerto Nuevo in San
6 Juan.

7 Q. When you say -- you say
8 immediately off the terminal, to what
9 terminal are you referring?

10 A. The terminal that was
11 operated by NPR, Incorporated that was
12 taken over by Sea Star. The terminal is
13 separated from the quote showroom lot by
14 a roadway.

15 Q. Are you familiar with the
16 name Sasi S-A-S-I, lot?

17 A. No.

18 Q. Have you ever heard that?

19 A. No.

20 Q. With respect to the
21 showroom lot, did MBC Leasing,
22 Incorporated or Emerald use that lot for
23 any period of time?

24 A. It did.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 139

1 Q. When did the use begin?

2 A. I am not positive.

3 Q. Do you know whether it

4 began in 2002?

5 A. It did.

6 Q. Do you know whether if the

7 use continues today?

8 A. It does not.

9 Q. When did the use end?

10 A. I am not sure. I would

11 have to look it up.

12 Q. Would it have been in 2003?

13 A. I believe so.

14 Q. During this use what was

15 done with the property, what was the

16 purpose of the use?

17 A. There was a few containers

18 and a lot of chassis that were in the lot

19 and equipment was sold from that lot.

20 Q. Sold by whom?

21 A. Myself, Marty McDonald.

22 Q. Where did you get the

23 containers and the chassis that were in

24 the showroom lot?

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 140

1 A. They were moved out of the

2 main terminal operated by Sea Star.

3 Q. So they were moved out of

4 Sea Star Line's terminal into the

5 showroom lot?

6 A. That is correct.

7 Q. When they were moved out of

8 the Sea Star Line terminal, would that be

9 a gate-out of the Sea Star Line terminal?

10 A. To my mind it would be.

11 Q. Would there be a TIR

12 signed?

13 A. There should have been.

14 Q. When they were moved into

15 the showroom lot, would that have been a

16 gate-in?

17 A. It could be considered

18 that.

19 Q. Would a TIR have been

20 signed?

21 A. No.

22 Q. Why not?

23 A. We operated it ourselves.

24 Q. By ourselves whom do you

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 141

1 mean?

2 A. Greenwich.

3 Q. So Greenwich produced no

4 TIRs with respect to equipment moved from

5 the Sea Star terminal to the showroom

6 lot; is that correct?

7 A. Greenwich would not ever

8 have done that. It wasn't their

9 terminal. Sea Star moved the equipment

10 as gate-out from their terminal to the

11 showroom lot.

12 Q. Whose terminal was the

13 showroom lot?

14 MR. MOLDOFF:

15 Objection to the question to the

16 extent it assumes that the lot is a

17 terminal.

18 Q. The showroom lot was used

19 for storage of equipment, is that

20 correct?

21 A. Yes.

22 Q. And this was equipment that

23 previously had been stored in the Sea

24 Star terminal; is that correct?

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 142

1 A. It was in the Sea Star

2 terminal.

3 Q. And Sea Star was concerned

4 about the overflow of equipment, Emerald

5 equipment in its terminal, was it not?

6 A. I can't speak for Sea Star.

7 Q. Did anyone ever tell you

8 that Sea Star Line was concerned about

9 the number of pieces of Emerald equipment

10 in the Sea Star terminal after April 27th

11 of 2002?

12 A. Certainly.

13 Q. And who told you that?

14 A. I don't know.

15 Q. Did Mr. Rooks tell you

16 that?

17 A. I just said I don't know.

18 Q. You don't recall anybody?

19 A. I don't recall who told me.

20 Q. And how many times were you

21 told that?

22 A. What?

23 Q. What Sea Star was concerned

24 about, the number of pieces of equipment

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 143

1 that were inside, that is Emerald's
2 equipment that were inside its terminal?

3 A. Several times.

4 Q. It was pretty much a
5 constant topic of conversation, wasn't
6 it?

7 A. No.

8 Q. Was it a monthly topic of
9 conversation?

10 A. No.

11 Q. Was it a quarterly topic of
12 conversation?

13 A. I couldn't say.

14 Q. And the cure for that was
15 supposed to be the rental of the showroom
16 property, wasn't it?

17 MR. MOLDOFF: Object
18 to the form of the question. You
19 can answer it.

20 THE WITNESS: The cure
21 for what? I don't understand the
22 question.

23 Q. The cure for the over
24 crowding of Emerald equipment in the Sea

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 144

1 Star terminal about which people whom you

2 don't know complained to you?

3 MR. MOLDOFF: Same

4 objection.

5 THE WITNESS: I don't

6 really understand what you are

7 saying when you say the cure.

8 There was equipment that

9 was in the Sea Star terminal that

10 was turned over to Emerald

11 Equipment and that equipment was

12 put into the showroom lot period.

13 Q. Before the showroom lot was

14 acquired by Sea Star and MBC Leasing,

15 Incorporated, you were selling Emerald

16 equipment out of the Sea Star lot, had

17 you not?

18 A. Yes.

19 Q. For how long did you sell

20 Emerald equipment out of the Sea Star

21 terminal after April 27th of 2002?

22 A. I have sold equipment

23 through about into November of 2004 I had

24 a sale.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 145

1 Q. So you are still selling
2 equipment that is stored in the Sea Star
3 terminal; is that correct?

4 A. Not at this point.

5 MR. MOLDOFF: You mean
6 2004 or 2003?

7 A. I mean 2004.

8 Q. He means 2004.

9 As of November of 2004, you
10 were still selling equipment that was
11 stored in the Sea Star terminal; is that
12 correct?

13 A. I did have a sale for some
14 equipment that was owned by Emerald
15 Equipment Leasing and I am pretty sure it
16 was November of 2004.

17 Q. And that equipment was
18 stored in the Sea Star terminal; is that
19 correct?

20 A. I don't know what you mean
21 by stored. It was physically there.

22 Q. And did you consumate that
23 sale?

24 A. That's what I said, I sold.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 146

1 Q. Let me show you a copy of a
2 letter dated March 27 of 2003 which I ask
3 the court reporter to mark as exhibit 24
4 for identification.

5 - - -

6 (Whereupon, Exhibit
7 Number 24 was marked for
8 identification.)

9 - - -

10 BY MR. ARMSTRONG:

11 Q. Do you recognize that
12 document?

13 A. Yes.

14 Q. In part Scott Criegee
15 states arrangements are being made to
16 have all equipment either sold or removed
17 by the end of April.

18 Do you see that?

19 A. Yes.

20 Q. Was all the equipment sold
21 by the end of April of 2003?

22 A. I don't know.

23 Q. So you don't know what
24 happened with the sale of the Emerald

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 147

1 equipment?

2 A. I do.

3 Q. Was there any equipment,
4 other than Emerald equipment, located at
5 the showroom property in March of 2003?

6 A. Sure.

7 Q. So you know that when he's
8 talking about arrangements are being made
9 to have all equipment sold, he is
10 referring to Emerald equipment; is that
11 correct?

12 A. He would be referring to
13 Emerald equipment.

14 Q. Was all of the equipment
15 sold before the end of April of 2003?

16 A. It would depend on whether
17 or not I had access, if it was mine, if
18 it wasn't mine, if it was off-hired, not
19 off-hired.

20 Q. You knew that all of the
21 equipment, the Emerald equipment was not
22 sold by the end of April of 2003; is that
23 correct?

24 A. There was some Emerald

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 148

1 equipment that I just sold.

2 Q. And was all of the Emerald
3 equipment removed from the showroom
4 property by the end of April of 2003?

5 A. Probably not.

6 Q. Why not?

7 A. It might not have been
8 off-hired. It may have just been put
9 there in May, it may have been put there
10 in October of 2004.

11 Q. Are you saying that Emerald
12 equipment located in the showroom was on
13 hire?

14 A. I apologize. You are -- I
15 was thinking of an entirely different
16 area than the showroom.

17 Q. What area were you thinking
18 about?

19 A. I was thinking about inside
20 the terminal.

21 Q. Inside what terminal?

22 A. The Sea Star terminal in
23 San Juan. So I apologize, but I will
24 have to ask you to re-ask the questions.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 149

1 Q. And you were concerned that
2 some of the equipment inside the
3 terminal, referring to the Sea Star
4 terminal in San Juan, would be on-hire;
5 is that correct?

6 A. That is correct as to the
7 showroom itself. I know we got out of
8 there.

9 Q. And you were concerned that
10 some of the equipment, the Emerald
11 equipment in the Sea Star terminal in San
12 Juan would be in storage; is that
13 correct?

14 A. I don't know, but speaking
15 specifically to the showroom we did leave
16 the showroom property completely.

17 Q. Let me me show you a series
18 of e-mails with attachments which I will
19 ask the court reporter to mark as exhibit
20 25 for identification.

21 - - -

22 (Whereupon, Exhibit
23 Number 25 was marked for
24 identification.)

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 150

1

- - -

2

BY MR. ARMSTRONG:

3

Q. Do you recognize these

4

documents?

5

A. Yes.

6

Q. Greenwich Terminals was an

7

agent for MBC Leasing, Incorporated; is

8

that correct?

9

A. It was.

10

Q. MBC Leasing, Incorporated

11

was compensating Greenwich Terminals; is

12

that correct?

13

A. Yes.

14

Q. Greenwich Terminals was

15

also an agent for Emerald, is that

16

correct?

17

A. It was.

18

Q. Was Emerald compensating

19

Greenwich Terminals?

20

A. It was not.

21

Q. As a matter of fact MBC

22

Leasing, Incorporated was paying all the

23

bills were they not?

24

A. They were.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 151

1 Q. Was there a contract
2 between Greenwich Terminals and Sea Star
3 Line?

4 A. Not?

5 A. Not to my knowledge.

6 Q. What was your purpose in
7 presenting -- strike that.

8 Who is Sheldon Granoff?

9 A. Sheldon Granoff is a Holt
10 Oversight employee in the accounts
11 receivable department.

12 Q. Does he or has he held a
13 position with Greenwich Terminals, to
14 your knowledge?

15 A. Not to my knowledge.

16 Q. Do you know who instructed
17 Mr. Granoff to communicate with Sea Star
18 regarding Greenwich Terminals bills?

19 A. I did.

20 Q. When did do you that?

21 A. At various times.

22 Q. And were these bills that
23 you had submitted to, or that Greenwich
24 Terminals had submitted to MBC Leasing,

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 152
Incorporated?

1
2 A. What bills?

3 Q. The bills that you
4 instructed Mr. Granoff to communicate
5 with Sea Star about?

6 A. No. These were never
7 submitted to MBC Leasing, Incorporated.

8 Q. Why not?

9 A. Because it was a charge for
10 Sea Star.

11 Q. Did Emerald Equipment
12 Leasing submit a charge to Sea Star for
13 Greenwich Terminals services?

14 A. Could you repeat that?

15 Q. Did Emerald submit a charge
16 to Sea Star for Greenwich Terminals
17 services?

18 A. It did not.

19 Q. You were asked to submit
20 any Greenwich Terminals charges through
21 Emerald Equipment Leasing; is that
22 correct?

23 A. That's what Andy Rooks
24 wrote to Sheldon, that's correct.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 153

1 Q. Emerald had the contractual
2 relationship with Sea Star Line; is that
3 correct?

4 A. Emerald Equipment Leasing
5 had a contractual obligation or contract
6 with Sea Star Line and within that
7 agreement they acknowledged that
8 Greenwich Terminals was the receiving
9 terminal.

10 There were e-mails that
11 talk about the fact that they recognize
12 Greenwich Terminals.

13 And any place in the
14 industry if you go to Maher Terminal and
15 pick up a container or a chassis and you
16 incur expenses you are billed by the
17 terminal. You are not billed by the
18 shipping line. You are not billed by
19 anybody else. You are billed by the
20 company that does the work.

21 Q. What was your problem in
22 submitting the charges to Sea Star Line
23 through Emerald Equipment Leasing?

24 A. Emerald Equipment Leasing

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 154
2 didn't do the work. Greenwich Terminals
3 did the work. As it is stated here under
4 our agreement with Emerald Equipment
5 Leasing the return location for off-hires
6 was this terminal period.

7 It goes on to say it is
8 therefore, an Emerald transaction. It is
9 not. The return location was Greenwich.
10 Greenwich did the work and not Emerald.

11 Q. Let me show you a copy of a
12 document which I ask the court reporter
13 to mark as exhibit 26 for identification.

14 - - -
15 (Whereupon, Exhibit
16 Number 26 was marked for
17 identification.)

18 - - -
19 MR. ARMSTRONG

20 Q. Have you seen that document
21 before?

22 A. I don't recall this.

23 Q. Do you see the e-mail at
24 the top, the Dear Andy e-mail at the top
 of the page?

 ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 155

1 A. Certainly.

2 Q. There's a reference to our

3 principal, do you see that?

4 A. Yes.

5 Q. Do you know who our

6 principal was?

7 A. It's plural with our

8 principals permission. I am not sure who

9 Sheldon would have talked to. And I am

10 also not sure what offset he was talking

11 about.

12 Q. It says is unacceptable to --

13 unacceptable to our principal. Do you

14 see that?

15 A. To our principal. Right.

16 Your company did this offset without our

17 principal's permission.

18 Q. I am asking who the

19 principal is, if you know.

20 MR. MOLDOFF: I am

21 objecting to the form of the

22 question to the extent that this

23 calls for speculation.

24 It is not an e-mail that

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 156
the witness testified - he never

2 seen before, he doesn't recall

3 actually seeing this, so I object.

4 THE WITNESS: I think

5 I also said that I don't know who

6 he spoke with.

7 Q. Let me show you a copy of a

8 letter dated August 27 of 2003 which I

9 ask the court reporter to mark as exhibit

10 27 for identification.

11 - - -

12 (Whereupon, Exhibit

13 Number 27 was marked for

14 identification.)

15 - - -

16 BY MR. ARMSTRONG:

17 Q. Do you recognize in a

18 document?

19 A. Yes, I do.

20 Q. Is that a true and correct

21 copy of the letter that you received?

22 A. Yes.

23 Q. All right.

24 A. I think so.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 157

1 Q. Let me show you a copy of
2 some e-mails dated August 8 and August
3 11th of 2003 which I will ask the court
4 reporter to mark as exhibit 28 for
5 identification.

6 - - -

7 (Whereupon, Exhibit
8 Number 28 was marked for
9 identification.)

10 - - -

11 BY MR. ARMSTRONG:

12 Q. Do you recognize those
13 documents?

14 A. I remember this.

15 Q. The top of the second page
16 Scott Criegeer states quote Art, after I
17 got over the shock of seven months of
18 your salary all at once unquote. Do you
19 see that?

20 A. I do.

21 Q. You were submitting bills
22 for your salary to Mr. Criegeer?

23 A. I was.

24 Q. And MBC Leasing was paying

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 158
those bills?

2 A. They were.

3 Q. MBC Leasing was paying your
4 salary?

5 A. They were paying it to
6 Greenwich Terminals.

7 Q. Were they paying anyone
8 else's salary?

9 A. They were paying for Marty
10 McDonald.

11 Q. And you would submit
12 separate bills for Marty McDonald's
13 salary?

14 A. That is correct.

15 Q. Were they paying anyone
16 else's salary?

17 A. Francisco Gonzalez.

18 Q. Who is that?

19 A. He's a gentleman in Puerto
20 Rico that was being used to help sell the
21 equipment.

22 Q. And who was using him?

23 A. We were.

24 Q. By me are you --

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 159

1 A. Greenwich.

2 Q. Was MBC Leasing,

3 Incorporated paying Tom Holt, Jr's

4 salary?

5 A. No.

6 Q. Let me show you a copy of a

7 letter or telefax, telecopy cover sheet

8 dated April 24th of 2003 which I will ask

9 the court reporter to mark as exhibit 29

10 for identification.

11 - - -

12 (Whereupon, Exhibit

13 Number 29 was marked for

14 identification.)

15 - - -

16 BY MR. ARMSTRONG:

17 Q. Do you recognize that

18 document?

19 A. Yes, I do.

20 Q. The upper corner, left-hand

21 corner there is a note Tom, Sr for your

22 information, is that Arthur underneath?

23 A. Yes.

24 Q. Did you write that?

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 160

1 A. I did.

2 Q. And why did you write it?

3 A. So that Tom Holt, Sr had a
4 copy of this sheet.

5 Q. There's a reference to
6 Tom's involvement. Was that reference to
7 Tom Holt, Sr or to Tom Holt, Jr, if you
8 knot?

9 A. Tom Holt, Jr.

10 Q. Did you also send a copy of
11 this to Tom Holt, Jr?

12 A. No, it went to Tom Holt, Jr
13 as well as myself.

14 Q. There's a reference to
15 looks like Lorraine's. Who is Lorraine?

16 A. Lorraine Robbins.

17 Q. By whom was she employed?

18 A. I am not sure.

19 Q. Did she work with you?

20 A. Yes. She worked with me on
21 this project.

22 Q. In what capacity did she
23 work with you?

24 A. To review the records and

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 161

1 do the billing.

2 Q. Review what records?

3 A. The self billing reports,

4 documents coming in regard to

5 inventories, sales and so forth.

6 Q. Does she still work with

7 you?

8 A. Yes, she does. Sorry.

9 Q. What are her duties at the

10 present time?

11 A. Doing the same thing.

12 Q. Where are you doing the

13 same thing?

14 A. We are working presently in

15 Philadelphia.

16 Q. What is is the address?

17 A. 7900 Old York Road, Elkins

18 Park, Pennsylvania.

19 Q. And is that where the work

20 on this quote project unquote is

21 continuing?

22 A. It is.

23 Q. Is there any work being

24 done on this project in Gloucester City?

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 162

1 A. Not to my knowledge.

2 Q. Where are the Emerald

3 records kept?

4 A. Which records are you

5 talking about.

6 Q. Are there different places

7 where different kinds of Emerald records

8 are kept?

9 A. I think so.

10 Q. Where are the Emerald

11 records related to this project kept?

12 A. Elkins Park.

13 Q. And are there other

14 locations where Emerald e-mail files are

15 are kept?

16 A. Not to my knowledge.

17 Q. Are there other locations

18 with Emerald contract files are kept?

19 A. Not to my knowledge.

20 MR. MOLDOFF: Are we

21 saying related to this project

22 or -- or no, or in general.

23 MR. ARMSTRONG: In

24 general right now.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 163

1 BY MR. ARMSTRONG:

2 Q. Let me show you a copy of a
3 document which I will ask the court
4 reporter to mark as exhibit 30 for
5 identification.

6 - - -

7 (Whereupon, Exhibit
8 Number 30 was marked for
9 identification.)

10 - - -

11 BY MR. ARMSTRONG:

12 Q. Do you recognize that
13 document?

14 A. Yes, I do remember this.

15 Q. Is that a true and correct
16 copy of exchange of e-mails that you
17 remember?

18 A. To the best of my
19 knowledge.

20 Q. Did you have any further
21 communications with Scott Criegee
22 concerning the subject matter?

23 A. Certainly.

24 Q. After these e-mails?

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 164

1 A. Certainly.

2 Q. When did you next
3 communicate with Scott Crierger?

4 A. I have no idea.

5 Q. Do you recall what the
6 substance of the communication was?

7 A. Certainly.

8 Q. What was the substance of
9 the communication?

10 A. That Sea Star was
11 continuing to not pay for equipment that
12 it was continuing to use.

13 Q. And who said that?

14 A. I did.

15 Q. And what did Scott Crierger
16 say?

17 A. He wanted to know if I had
18 any idea as to what the extent of that
19 could be. And I said it could be
20 millions.

21 Q. What was his response?

22 A. Do whatever we felt should
23 be done.

24 Q. Did you ever tell Scott

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 165

1 Crieger that you had no knowledge of the
2 equipment that was missing or POS and
3 leased to NPR, Incorporated as of April
4 26th of 2002?

5 A. No.

6 Q. Did you ever tell Scott
7 Crieger what the basis for your
8 conclusion that it could be millions was?

9 A. Certainly.

10 Q. And certainly what did you
11 tell him?

12 A. I certainly said to him
13 that I had been reviewing as of this
14 particular point in time which was May of
15 2003 and we had a substantial number of
16 reports, self billing reports that came
17 from Sea Star and had sales data by unit
18 and TIRs for equipment that was being
19 returned by Sea Star and checking all of
20 this data and information from third
21 parties that the self billing reports
22 were wrong.

23 Q. Number one, who was
24 checking all of this data?

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 166

1 A. Lorraine was checking it

2 and I was checking it.

3 Q. Was anybody else involved
4 in checking all of this data?

5 A. Not really.

6 Q. What information from third
7 parties were you receiving?

8 A. I was getting information
9 from CSX Railroad.

10 Q. In what form were you
11 getting information from CSX Railroad?

12 A. Electronically.

13 Q. Was this printed?

14 A. It was not printed.

15 Q. You did not print it?

16 A. It was incorporated into
17 the daily move -- the move histories,
18 which was provided to Sea Star.

19 Q. When you say daily move
20 histories, are you talking about
21 documents you and Lorraine prepared?

22 A. No. The daily move history
23 was compiled electronically, some
24 information was put in manually. CSX

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 167

1 computer talked with the Holt computer to

2 say what units moved on the rail line.

3 We looked at information that CSX -- that

4 Sea Star inputted into the system.

5 Q. And over what period of

6 time did you collect the information from

7 CSX?

8 A. It still goes on.

9 Q. Do you have any of this

10 information in documentary form?

11 A. Certainly. All you have to

12 do is look at the move histories that

13 were already provided.

14 Q. Sir, I am asking whether

15 you have any of the CSX information in

16 documentary form? I'm sorry if I was

17 unclear.

18 A. Then I don't understand the

19 question.

20 Q. Do you have any of the

21 information provided by CSX in

22 documentary form?

23 A. I still don't understand

24 what you mean because I would only reply

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 168

1 to that, again, to look at the individual

2 move history.

3 Q. And the move history is a

4 document that who prepared?

5 A. It is prepared from the

6 computer system.

7 Q. So it is a document that

8 someone in the Holt organization

9 prepares; is that correct?

10 A. That is right.

11 Q. Let me show you a copy of a

12 note dated May 17th of 2002, with

13 attachment, that I will ask the court

14 reporter to mark as exhibit 31 for

15 identification.

16 - - -

17 (Whereupon, Exhibit

18 Number 31 was marked for

19 identification.)

20 - - -

21 BY MR. ARMSTRONG:

22 Q. Do you recognize those

23 documents?

24 A. Yes, I do remember this.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 169

1 Q. Is that a true and correct
2 copy of a note that you sent to Andy?

3 A. It looks like it.

4 Q. Is the second page a true
5 and correct copy of the attachment?

6 A. Probably.

7 Q. Do you recognize the
8 handwriting on the second page?

9 A. Yes.

10 Q. Do you know what the
11 checkmarks mean?

12 A. No.

13 Q. Whose handwriting is that?

14 A. Lorraine Robbins.

15 Q. You are sending the note
16 May 17th of 2002; is that correct?

17 A. That's correct.

18 Q. How did you send that to
19 Mr. Rooks?

20 A. I probably faxed it.

21 Q. Now, can you read the dates
22 that are handwritten?

23 A. Yes.

24 Q. How many of those dates are

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 170
proper to April 26th of 2002?

A. Ten.

Q. You are complaining to Mr.
Rooks about a CSX document, is that
correct, indicating various moves?

A. I am not complaining about
a document. I am saying I have attached
a copy of a notice from CSX Rail listing
charges that are being invoiced to
Emerald Equipment Leasing for the
repositioning of equipment.

It is the position of CSX
to hold this equipment in the rail yard
until they collect the charges.

Lorraine was kind enough to
add the date of the freight move to the
schedule to aid you in checking the move
further within your system.

We appreciate if you would
contact me next week and advise of your
findings. I am not complaining about a
document.

Q. You are complaining that
Mr. Rooks is not paying the charges

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 171
2 listed on that document; is that correct?

3 A. I am not complaining about
4 anything.

5 MR. MOLDOFF: Object
6 to the form of the question.

7 Q. Were you asking Mr. Rooks
8 to pay the charges listed on that
9 document?

10 A. I am asking Mr. Rooks to
11 take a look at this document and to talk
12 with me about it and let him know that
13 CSX is holding the equipment in the yard
14 until they collect the charges.

15 Q. Why would Mr. Rooks want to
16 look at that document?

17 A. Because if unit number PRMU
18 650713 was sent into the yard, into the
19 CSX yard as a unit on a flat car and they
20 had assessed charges he should want to
21 know about it because that unit could
22 have been sent in by him, by Sea Star.
23 It may have a load in it. It may be
24 empty, he may be using it, he would like
to know, I am sure that, the equipment,

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 172
in fact, was there.

2 Q. Were you expecting Mr.
3 Rooks to pay the charges for
4 repositioning equipment prior to April
5 27th of 2002?

6 A. No.

7 Q. So you were just sending
8 this as a kindly gesture?

9 A. Not a kindly gesture and
10 that's not polite quite frankly.

11 There are units that are on
12 here that show that the equipment moved
13 after the date that you specified.

14 Q. Shipments in process; is
15 that correct?

16 A. I don't know.

17 Q. Did you ever make an
18 investigation?

19 A. It wasn't up to me to have
20 to investigate. They could have been
21 using it. This is a reposition.

22 MR. MOLDOFF: Okay.

23 Q. And did you send Mr. Rooks
24 any other documents like this CSX

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 173

1 documents?

2 A. I don't know. I may have.

3 Q. Now, did you download and

4 print this CSX document?

5 A. No.

6 Q. How did you get it?

7 A. I probably received that as

8 a fax.

9 Q. From whom?

10 A. CSX rail.

11 Q. Can you tell?

12 A. I can't tell.

13 Q. Let me show you a copy of a

14 telefax dated September 24th of 2003

15 together with attachment which I ask the

16 court reporter to mark as exhibit 32 for

17 identification.

18 - - -

19 (Whereupon, Exhibit

20 Number 32 was marked for

21 identification.)

22 - - -

23 BY MR. ARMSTRONG:

24 Q. Do you recognize that

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 174

1 document?

2 A. I do remember seeing this.

3 Q. Is that a true and correct
4 copy of a telefax that you received?

5 A. Probably.

6 Q. On September 24th of 2003,
7 you were still working for MBC Leasing,
8 Incorporated; is that correct?

9 A. I was doing work for them,
10 yes.

11 Q. He says quote just please
12 make sure you are not claiming payment
13 for units and time periods covered under
14 self billing reports from Sea Star
15 unquote.

16 Do you see that?

17 A. Yes, I do.

18 Q. How did you make sure that
19 you were not claiming payment for units
20 and time periods covered under
21 self-billing reports from Sea Star?

22 A. As we talked about it
23 earlier this morning, not having received
24 copies of the manifests, we could not

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 175

1 know what units were on board the ships.

2 So is it possible that a
3 unit was billed, yes. It is possible
4 that a unit was billed for which Sea Star
5 paid into NPR, Incorporated and if they
6 had the manifests as were promised then
7 we would be able to adjust the bill
8 accordingly.

9 Q. Did you, after receiving
10 that telefax, contact Scott Crierger and
11 say I can't make sure?

12 A. I am sure I did.

13 Q. Do you recall specifically
14 telling him that?

15 A. I think so.

16 Q. When did you do that?

17 A. Whenever -- in close
18 proximity to receipt.

19 Q. Did you call him on the
20 phone?

21 MR. MOLDOFF: Just to
22 clear up some confusion, I don't
23 think Art understood the question.

24 MR. ARMSTRONG: I'm
ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 176
2 sorry, counsel, you know, you could
3 objection as to form, but we are
4 not getting into argument at this
5 point.

6 MR. MOLDOFF: You are
7 going to have an unclear
8 transcript.

9 MR. ARMSTRONG: I
10 don't care.

11 If you want to clarify it
12 on cross-examination.

13 MR. MOLDOFF: If that
14 is the way you want to conduct the
15 deposition.

16 MR. ARMSTRONG: Fine.

17 BY MR. ARMSTRONG:

18 Q. Let me show you a copy of a
19 document that's been identified as
20 plaintiffs exhibit 6 to the deposition of
21 Mr. Allen, John Allen.

22 Do you recognize that
23 document?

24 A. Yes, I do.

Q. Is that a correct copy of

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 177

1 the telefax that you received?

2 A. I believe so.

3 Q. Does that represent the
4 agreement, that is the second page,
5 represent the agreement between Greenwich
6 Terminals and General Transportation
7 Services?

8 A. Yes.

9 Q. Let me show you a copy of a
10 document that's been identified as
11 plaintiffs exhibit 3 to the deposition of
12 John Allen.

13 Can you identify that?

14 A. I don't recall this.

15 Q. Do you know who prepared
16 that?

17 A. Not offhand.

18 Q. Does it look like something
19 that someone in your organization would
20 have prepared?

21 A. No.

22 Q. Let me show you a copy of a
23 document that's been identified as
24 Plaintiffs exhibit 5 to the deposition of

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 178

1 John Allen.

2 Can you identify that?

3 A. Yes.

4 Q. Do you recall who prepared
5 the telefax?

6 A. Yes.

7 Q. Do you know who prepared
8 the list attached?

9 A. No.

10 Q. At the time you sent that
11 telefax, what was the procedure for
12 off-hiring equipment at JAX PORT, that is
13 Emerald equipment?

14 A. From the time that John
15 Allen took over the terminal and a piece
16 of equipment arrived at the terminal he
17 would have prepared a TIR and listed the
18 piece of equipment, had the date of the
19 return and it would have been signed by
20 both a Sea Star representative and the
21 GTS representative.

22 Q. When did John Allen take
23 over the terminal?

24 A. I would have to check the

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 179

1 exact date.

2 Q. Was it on or about August 1
3 of 2002?

4 A. It was in that area.

5 Q. How many locations were
6 there for the terminal at Blunt Island,
7 do you know?

8 A. I don't understand the
9 question.

10 Q. You have heard of the Sand
11 Lot, haven't you?

12 A. I have.

13 Q. That was part of the
14 terminal, wasn't it?

15 A. Yes, it is.

16 Q. And that was used by Sea
17 Star and others to return equipment, was
18 it not?

19 A. They may have put equipment
20 in there, I don't know.

21 Q. MBC Leasing was paying for
22 that, weren't they?

23 A. They were.

24 Q. Did you have anybody at the

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 180

1 Sand Lot to receive equipment?

2 A. When?

3 Q. Before August 1?

4 A. No.

5 Q. How would you record what
6 equipment was delivered to the Sand Lot
7 before August 1?

8 A. We would have relied upon
9 Sea Star's documentation.

10 Q. Do you know whether anyone
11 was at the Intermodal Lot to receive
12 Emerald equipment?

13 A. As we discussed this
14 morning, until John Allen started in to
15 operate that terminal there was not an a
16 party there.

17 Q. Would it be fair to say
18 then that with respect to equipment
19 re-delivered at JAX PORT, the only
20 records that you have prior to John
21 Allen's involvement are are those
22 provided by Sea Star?

23 A. In regard to the JAX
24 terminal?

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 181

1 Q. Yes, sir.

2 A. I believe so.

3 Q. Now, did you ever receive a
4 copy of the JAX-PORT inventory when it
5 shut down the old NPR terminal?

6 A. No.

7 Q. Did you ever ask for one?

8 A. No.

9 Q. I show you a copy of an
10 e-mail dated July 23rd of 2002 together
11 where attachments and a second e-mail
12 dated July 23rd of 2002 with attachments
13 that have been marked as plaintiffs
14 exhibit 8 and 4 to John Allen's
15 deposition.

16 Do you recognize that
17 document?

18 A. Yes. I think I remember
19 this.

20 Q. Let me show you a copy of
21 an e-mail dated July 23rd of 2002 which
22 has been marked as Plaintiffs exhibit 9
23 to John Allen's deposition.

24 Do you recall receiving

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 182
2 that document?

3 A. I think I remember this as
4 well.

5 Q. Let me show you a copy of
6 an e-mail dated September 26th of 2002
7 which has been marked as Plaintiffs
8 exhibit 18 to Mr. Allen's deposition.

9 Do you recall sending that
10 e-mail?

11 A. Yes.

12 Q. Did you ever receive the
13 copies of the TIRs from Mr. Allen?

14 A. Certainly.

15 Q. Let me show you a copy of a
16 letter together with attachments that it
17 has been marked as plaintiffs exhibit 19
18 to Mr. Allen's deposition.

19 Do you recall receiving
20 those documents?

21 A. Yes, I think I remember
22 this.

23 Q. In regard to that, had you
24 been aware that the old NPR, Incorporated
terminal was not secured until August 31

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 183
1 of 2002?

2 MR. MOLDOFF:

3 Objection to the question.

4 THE WITNESS: I really
5 don't recall when it was all closed
6 up.

7 Q. After you received that,
8 did you take any action?

9 A. I don't understand the
10 question.

11 Q. Do you recall any
12 discussions with Mr. Allen regarding the
13 contents of that report?

14 A. Yes.

15 Q. What discussions do you
16 recall?

17 A. I recall that we talked
18 about the fact that containers were down
19 stacked, put on the ground, there was a
20 buffer between the yard and the rest of
21 the terminal to insure that no one could
22 just come in and just drop equipment or
23 take out equipment.

24 Q. Who down stacked the

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 184
containers?

2 A. GTS did.

3 Q. Do you recall anything else
4 about that report?

5 A. Not offhand.

6 MR. ARMSTRONG: Let's
7 break.

8 - - -

9 (Whereupon, a short
10 recess was taken.)

11 - - -

12 MR. ARMSTRONG: All
13 right.

14 MR. MOLDOFF: Back on
15 the record.

16 Mr. Davis would like to
17 clarify something that he said
18 regarding exhibit 32 and the
19 response to the questions in
20 connection with exhibit 32.

21 THE WITNESS: I am not
22 sure exactly what I think I heard
23 in regard to this exhibit which
24 Scott Crierger said to me in the

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 185
2 cover sheet just please make sure
3 you are not claiming payments for
4 units on time periods covered under
5 self-billing reports from Sea Star.

6 And I thought that your
7 question related to in-transit on
8 ships. At least that's what I
9 think I heard.

10 And that's why I answered
11 if we had the manifests that we had
12 been asking for, that were never
13 received we could have adjusted
14 accordingly.

15 When we invoiced for units,
16 whether they were reported on the
17 self-billing report or not reported
18 on the self-billing reports, we
19 took into account just a lot of
20 information.

21 We took into account the
22 information provided by Sea Star on
23 its own self-billing report for
24 days paid.

25 We took into account TIRs

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 186
which showed when the equipment was

On-hired or off-hired, sales
information, geographic locations
such as it was gate-out of
Philadelphia and ended up in
California and then ended up back
in San Juan where I sold it.

But no matter what, the
best of our knowledge, after
spending an immense amount of time
on our billings, we always gave
credit for the days paid and
pointed out in a lot of instances
that a credit was due on a piece of
equipment, was due to Sea Star
because it was overpaid.

I may have sold a piece of
equipment at a given point of time,
but it continued to appear after
the actual sale date and I hope
that clarifies for you.

BY MR. ARMSTRONG:

Q. When you were referring to
manifests on the three vessels, you were

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 187
referring to the NPR manifests, were you

2 not.

3 A. That is correct.

4 Q. And those are the manifests
5 that you never obtained from NPR; is that
6 correct?

7 A. They weren't obtained from
8 anybody.

9 Q. You didn't go down to
10 Gloucester City and say is there a copy
11 of the manifests for these vessels there?

12 MR. MOLDOFF:

13 Objection. He testified
14 that he asked Sea Star for them and
15 he never received them from Sea
16 Star.

17 BY MR. ARMSTRONG:

18 Q. You didn't ask anybody from
19 NPR?

20 A. As far as I was concerned
21 there was nobody to ask.

22 Q. Let me ask you about these
23 claim forms. I have a few questions.

24 As I understand it you

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 188
2 performed no inventories of Emerald
3 equipment before April 27th of 2002; is
4 that correct?

5 A. That's correct.

6 Q. What inventories of Emerald
7 equipment did you perform after April
8 27th of 2002?

9 A. As stated this morning I
10 did take some inventory or inventories in
11 2003 when I was in Puerto Rico.

12 Q. Did you take inventories at
13 any time at Packer Avenue?

14 A. No.

15 Q. Did you take any
16 inventories at JAX PORT?

17 A. I personally did not.

18 Q. Did anyone on your behalf?

19 A. GTS did.

20 Q. When did GTS inventory
21 Emerald equipment at JAX PORT?

22 A. I would have to go back to
23 the documents where they showed what the
24 inventories were.

Q. Did Mr. McDonald perform

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 189
any inventories of Emerald equipment?

2 A. I don't believe so.

3 Q. Did you ask Inland Depots
4 for orders regarding Emerald equipment?

5 A. I have asked some and Sea
6 Star provided many.

7 Q. Sea Star provided Inland
8 Depot records as a matter of course?

9 A. On occasion.

10 Q. Did you investigate what
11 Emerald equipment was located in the
12 Dominican Republic as of April 27th of
13 2004?

14 A. No, I did not.

15 Q. Did you investigate whether
16 there were other locations where Emerald
17 equipment might be as of April 27th of
18 2004?

19 A. No.

20 Q. I am looking at a page and
21 this just happens to be one of 19
22 entitled schedule, 40 foot chassis 11 /
23 11 / 2003 (amended 12 / 16 / 2003).

24 Am I correct in

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 190
2 understanding that this schedule
3 originally was prepared on November 11th
4 of 2003?

5 A. May I? Looking on how this
6 is laid out I don't believe this was
7 prepared by me.

8 Q. Do you know who prepared
9 it?

10 A. No.

11 Q. Let me show you another
12 page. For Emerald Equipment Leasing
13 invoice to Sea Star Line 11 / 11 / 2003
14 amended 8 / 23 / 2004, schedule 40 foot
15 chassis.

16 Do you recognize that page?

17 A. This might be an early
18 billing, but it doesn't look like the
19 format that we were using.

20 Q. This wasn't the format that
21 you were using in --

22 A. -- it is possible, but
23 amended 8-23-2004. No.

24 Q. Do you recall having
columns, date on-hire?

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 191

1 A. I recall having prefix
2 number - prefix number date on-hire, date
3 off-hire information that was Sea Star's
4 information that was Emerald's, how much
5 they paid, a spreadsheet that would show
6 a spread in there that would show the
7 actual days that were paid and under what
8 time period. This looks like it is maybe
9 part of a schedule.

10 Q. Let's look at document
11 E006622. Is that the schedule?

12 A. Yes. This looks a lot more
13 like what we had produced which does not
14 look like what was previously shown to
15 me.

16 Q. Let's look at that.
17 There's a column, first column is prefix.
18 What does that mean?

19 A. Prefix of the number of the
20 unit itself.

21 Q. Were there particular
22 prefixes relating to specific equipment?

23 A. Yes.

24 Q. How did you determine what

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 192

1 those prefixes were?

2 A. That's something that was
3 done with the equipment. The equipment
4 has those prefix numbers when we acquired
5 them.

6 Q. When who acquired them?

7 A. When Emerald acquired the
8 equipment in November of 1997.

9 Q. From whom did Emerald
10 acquire the equipment?

11 A. That was part of the NPR
12 transaction, the acquisition.

13 Q. When you sold Emerald
14 equipment did you change the prefix
15 number?

16 A. No.

17 Q. Why not?

18 A. Didn't find a need to.
19 NPR, Incorporated was out of business and
20 it was up to whoever the purchaser was to
21 put their own prefix on because their own
22 prefix would designate if they were going
23 to continue to use it -- in shipping
24 would designate their particular line.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 193

1 Q. If the prefix was not
2 changed, how would you know that anyone
3 other than Emerald Equipment Leasing
4 owned the equipment if somebody bought it
5 for example,

6 A. How would I know? If I saw
7 it later you mean?

8 Q. Yes.

9 A. I would be able to look
10 into the database and see if I sold it.

11 Q. How would a third party
12 know whether you had sold it or not?

13 A. They would have to ask me.

14 Q. So for every piece of
15 equipment with the PRRMC prefix, for
16 example, after April 27th of 2002,
17 someone would have to ask you to find out
18 whether or not it belonged to Emerald, is
19 that correct?

20 A. Would you repeat that
21 please?

22 MR. ARMSTRONG: Read
23 it back.

24 A. That is correct.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 194

1 Q. What about there's a column
2 number, was that an Emerald number?

3 A. That was a specific number
4 applied to that one specific unit.

5 Q. Another column is date
6 on-hire. What's the meaning of that?

7 A. That is the date on-hire
8 that Sea Star said they put the unit
9 on-hire.

10 Q. Were you using Sea Star
11 documents to determine whether the unit
12 was on-hire?

13 A. For the date -- for the Sea
14 Star date on-hire?

15 Q. Yes.

16 A. We used the Sea Star
17 documents.

18 Q. Did you use any other
19 documents?

20 A. Not for that.

21 Q. The next column is date
22 off-hire. What does that mean?

23 A. The date that Sea Star said
24 they off-hired the unit.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 195

1 Q. How did you determine the
2 date off-hire for a particular piece of
3 equipment?

4 A. Again we used Sea Star
5 information.

6 Q. Did you use any other
7 information?

8 A. Not for that.

9 Q. You have per diem, what's
10 the meaning of that?

11 A. The daily rental, the daily
12 charge that was to be paid for a piece of
13 equipment.

14 Q. And what determination or
15 what documents did you use to determine
16 what the per diem was?

17 A. The lease agreements.

18 Q. Are you referring to the
19 equipment rental agreement?

20 A. Yes.

21 Q. There was no other
22 agreement, is that correct?

23 MR. MOLDOFF:

24 Objection to the question.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 196

1 THE WITNESS: I know

2 of the May 1st agreement.

3 MR. MOLDOFF: That's

4 been asked and answered.

5 THE WITNESS: And the

6 4 / 29, as of 4 / 29 agreement.

7 Q. The as of 4 / 29 agreement?

8 A. Yes.

9 Q. What is that?

10 A. That was the other written

11 agreement.

12 Q. Are you talking about the

13 equipment rental agreement dated as of

14 July 31st of 2002?

15 A. Right effective 4 / 29.

16 Q. And that is where I would

17 find the basis for the per diem

18 calculations?

19 A. I believe so.

20 Q. And there's a column actual

21 days paid. Where did you get that

22 information?

23 A. From the Sea Star

24 information.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 197

1 Q. All right.

2 A. Their self-billing reports.

3 Q. The next column is amount
4 paid. Where did you get that
5 information?

6 A. Sea Star billing reports.

7 Q. The next column is actual
8 on-hire. What does that mean?

9 A. What we say the actual
10 on-hire was.

11 Q. How did you determine what
12 the actual on-hire was for a particular
13 piece of equipment?

14 A. We looked at the move
15 histories, we took into account
16 information supplied by Sea Star's
17 employees when they put information into
18 the Holt computer. TIR information for
19 gate-out such as going out of
20 Philadelphia, gate-in information and so
21 on, railroad information.

22 Q. You knew that Sea Star was
23 inventorying equipment at various
24 terminals including San Juan beginning

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 198
late April of 2002; is that correct?

2 A. They had equipment in San
3 Juan.

4 Q. You knew that Sea Star was
5 inventorying equipment at various
6 terminals including that in San Juan
7 beginning in late April of 2002, is that
8 correct?

9 MR. MOLDOFF: Object
10 to the form of the question.

11 THE WITNESS: They had
12 equipment in San Juan, yes, they
13 did have equipment there.

14 Q. Were they inventorying
15 equipment that was located there in the
16 Puerto Nuevo terminal in San Juan?

17 MR. MOLDOFF: Was Sea
18 Star?

19 Q. Wait a minute.

20 MR. MOLDOFF: Hold
21 it. I object. I object. You are
22 being argumentative and I object.

23 Q. You know, do you not, that
24 as of April 27th of 2002 there was

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 199
2 Emerald equipment that had been on lease
3 to NPR, Incorporated located in the
4 terminal at Puerto Nuevo in San Juan; is
5 that correct?

6 A. That is correct.

7 Q. You know that one of the
8 things that Sea Star was doing was to
9 then inventory that equipment, is that
10 correct?

11 MR. MOLDOFF: Object
12 to the form of the question. Do
13 you know?

14 A. On April 27th.

15 Q. On and after April 27th?

16 A. I can't speak to on April
17 27th.

18 Q. Can you speak to any date
19 after April 27th?

20 A. Certainly.

21 Q. What date can you first
22 speak to?

23 A. The 22nd of June of 2002.

24 Q. So as far as you know the
first time that Sea Star began to

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 200
inventory equipment was June 22nd of
2 2002?

3 A. That is the first inventory
4 I received from them.

5 Q. All right.

6 Mr. Davis, and do you know
7 how long it took to prepare that
8 inventory?

9 A. I don't have any idea.

10 Q. Did Mr. McDonald
11 participate in the inventory?

12 A. No.

13 Q. Was information as to the
14 location of Emerald equipment being
15 entered by Sea Star into the Holt
16 computer system?

17 MR. MOLDOFF: At what
18 time?

19 Q. At any time?

20 A. Certainly.

21 Q. So that information was
22 being entered into the computer system
23 beginning late April through at least a
24 three-week period; is that correct?

ESQUIRE DEPOSITION SERVICES